

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FERNANDO ROBLES,

Petitioner,

v.

WARDEN BAKER, *et al.*,

Respondents.

Case No. 3:19-cv-00251-MMD-CLB

ORDER

This is a habeas corpus proceeding under 28 U.S.C. § 2254 brought by Petitioner Fernando Robles, a Nevada prisoner who is represented by counsel. Currently before the Court is Respondents' Motion to Dismiss (ECF No. 11) ("Motion") one claim in Robles' First Amended Petition for Writ of Habeas Corpus (ECF No. 8) ("Amended Petition"). Robles does not oppose the Motion. (ECF No. 25.)

Robles challenges a conviction and sentence imposed by the Eighth Judicial District Court for Clark County ("state court") in *State of Nevada v. Robles*, Case No. C-13-288844-1. In June 2014, a jury found Robles guilty of 23 of 25 charged offenses, including sexual assault with a minor under 14 years of age, lewdness with a child under the age of 14, attempted sexual assault with a minor under 14 years of age, and the lesser-included offense of statutory sexual seduction. (ECF No. 19-4.) The state court did not adjudicate Robles on the five counts for which the jury convicted Robles of the lesser-included offense: Counts 1, 3, 5, 11, and 13. (ECF No. 19-10 at 4.) Rather, pursuant to prosecutors' request, those counts were set aside but not dismissed. (*Id.*) On direct appeal, the Nevada Supreme Court concluded that the state court erred by setting aside Counts 1, 3, 5, 11, and 13, and remanded the case with instructions for dismissal. (ECF No. 20-5 at 15-16.)

Respondents move to dismiss Ground 1 of Robles's Amended Petition to the extent it relates to Count 13 because that count was dismissed by the state court on remand and

1 Robles is not in custody pursuant to Count 13. (ECF No. 20-7 (amended judgment of
2 conviction, entered January 25, 2017).) Robles does not oppose the Motion and
3 acknowledges that he inadvertently challenged Count 13. He therefore concedes that the
4 portion of Ground 1 related to Count 13 should be dismissed.

5 It is therefore ordered that Respondents' Motion to Dismiss (ECF No. 11) is
6 granted. The portion of Ground 1 related to Count 13 is dismissed.

7 It is further ordered that Respondents must file an answer to the remaining claims
8 of the Amended Petition (ECF No. 8) by October 26, 2020. Robles will have 30 days from
9 service of the answer within which to file a reply.

10 DATED THIS 27th day of August 2020.

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14 MIRANDA M. DU
15 CHIEF UNITED STATES DISTRICT JUDGE
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